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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,524	09/08/2003	Michael Routtenberg	33541/US	1945

7590 11/28/2007  
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EXAMINER
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HAMMOND III, THOMAS M

ART UNIT	PAPER NUMBER
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3691

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11/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/658,524	Applicant(s) ROUTTENBERG, MICHAEL	
	Examiner Thomas M. Hammond III	Art Unit 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/06/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

1. This action is in reply to the application filed on 09/08/2003.
2. Claims 1-20 are currently pending and have been examined.

### ***Information Disclosure Statement***

3. The Information Disclosure Statement filed 10/06/2003 has been considered. An initialed copy of the Form 1449 is enclosed herewith.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

*The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.*

5. Claims 2-4, 7, and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. With regard to claims 2-4, 7, and 16, the applicant recites the limitations, the manufacturer's initial public offering date", "the initial public offering date", and "the manufacturer IPO date". There is no antecedent basis for these limitations, therefore rendering the scope of the claims indeterminate. The examiner will interpret these limitations in their broadest reasonable light.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

8. Claims 1, 5-6, and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Gallagher, US Patent No. 7,219,071 B2*, in view of, *Tenembaum, US Patent Publication No. 2001/0047295 A1*.

#### **As per claim 1**

##### ***Gallagher teaches:***

- Issuing to a buyer a right to obtain a selected number of warrants of a manufacturer when the buyer places a purchase order before the start of a vesting period for a selected number of products or services, the number of obtainable warrants being related to the size or value of the purchase order (see at least column 8, lines 19-64)
- Setting a strike price for the warrants before the start of the vesting period (see at least column 23, lines 16-35)
- Reducing the number of obtainable warrants as time elapses during the vesting period (see at least column 8, lines 19-64)
- Granting a selected number of warrants to the buyer at the strike price when the buyer confirms the purchase of at least part of the purchase order before the end of the vesting period, the number of granted warrants being related to the size or value of the purchase order that is

confirmed and being up to the number of remaining obtainable warrants (see at least column 8, lines 19-64)

***Gallagher does not teach:***

- Wherein the purchase orders are revocable and irrevocable

***Tenembaum teaches:***

- Wherein the purchase orders are revocable and irrevocable (see at least page 3, paragraph 31)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Gallagher, the teachings of Tenembaum. One would have been motivated to do so to create a reciprocating trust between the customer and the business (see at least Tenembaum Abstract).*

**As per claim 5**

***Gallagher, in view of Tenembaum, teaches the method of claim 1, as described above.***

***Gallagher further teaches:***

- Wherein the number of obtainable warrants is reduced to zero at the end of the vesting period (see at least column 8, lines 19-64)

**As per claim 6**

***Gallagher, in view of Tenembaum, teaches the method of claim 6, as described above.***

***Gallagher further teaches:***

- Wherein the number of obtainable warrants is reduced in stages over the vesting period (see at least column 8, lines 19-64)

**As per claim 8**

***Gallagher, in view of Tenenbaum, teaches the method of claim 1, as described above.***

***Gallagher further teaches:***

- Incentive programs based on customer loyalty (see at least column 8, lines 19-64)

***Gallagher does not teach:***

- Wherein the number of obtainable warrants is reduced when the buyer enters into a commercial relationship with a competitor to the manufacturer

*However, the examiner takes OFFICIAL NOTICE that loyalty programs designed to reduce benefits for purchasing outside the loyalty contract are old and well known in the art of advertising and promotion. Furthermore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Gallagher, in view of Tenenbaum, this well known fact. One would have been motivated to do so to create a reciprocating trust between the customer and the business (see at least Tenenbaum Abstract).*

**As per claim 9**

***Gallagher, in view of Tenenbaum, teaches the method of claim 1, as described above.***

***Gallagher further teaches:***

- Executing an initial purchase order agreement with the buyer at the time the buyer places the revocable purchase order, the agreement defining the warrant strike price, a planned product delivery date, the vesting period, and the rate of reduction in obtainable warrants during the vesting period (see at least column 8, lines 19-64; column 28, lines 20-31)

**As per claim 10**

***Gallagher, in view of Tenenbaum, teaches the method of claim 1, as described above.***

***Gallagher further teaches:***

- Incentive programs based on customer loyalty (see at least column 8, lines 19-64)

***Gallagher does not teach:***

- Receiving a deposit from the buyer at the date the buyer irrevocably confirms at least part of its purchase order

*However, the examiner takes OFFICIAL NOTICE that receiving a deposit for goods or services to be purchased is old and well known in business. Furthermore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Gallagher, in view of Tenenbaum, this well known fact. One would have been motivated to do so to create a reciprocating trust between the customer and the business (see at least Tenenbaum Abstract).*

**As per claim 11**

***Gallagher, in view of Tenenbaum, teaches the method of claim 1, as described above.***

***Gallagher further teaches:***

- Further comprising in step (a) issuing the selected number of warrants to the buyer only when the buyer places a purchase order above a minimum value (see at least column 8, lines 19-64)

***Gallagher does not teach:***

- Revocable purchase orders

***Tenenbaum teaches:***

- Revocable purchase orders (see at least page 3, paragraph 31)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Gallagher, in view of Tenenbaum, the additional teachings of Tenenbaum. One would have been motivated to do so to create a reciprocating trust between the customer and the business (see at least Tenenbaum Abstract).*



**As per claim 12**

***Gallagher, in view of Tenenbaum, teaches the method of claim 1, as described above.***

***Gallagher does not teach:***

- Wherein the revocable purchase orders are revocable without penalty or cost to the buyer

***Tenenbaum teaches:***

- Wherein the revocable purchase orders are revocable without penalty or cost to the buyer (see at least page 3, paragraph 31)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Gallagher, in view of Tenenbaum, the additional teachings of Tenenbaum. One would have been motivated to do so to create a reciprocating trust between the customer and the business (see at least Tenenbaum Abstract).*

9. Claims 2-4, 7, and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallagher, US Patent No. 7,219,071 B2, in view of, Tenenbaum, US Patent Publication No. 2001/0047295 A1, in further view of, Ellis et al., "A Guide to the Initial Public Offering Process", January 1999.

**As per claim 2**

***Gallagher, in view of Tenenbaum, teaches the method of claim 1, as described above.***

***Gallagher does not teach:***

- Wherein the revocable purchase order is placed before the manufacturer's initial public offering date

***Ellis teaches:***

- Wherein the revocable purchase order is placed before the manufacturer's initial public offering date (see at least page 6)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Gallagher, in view of Tenenbaum, the teachings of Ellis. One would have been motivated to do so to create a reciprocating trust between the customer and the business (see at least Tenenbaum Abstract).*

**As per claim 3**

***Gallagher, in view of Tenenbaum, in further view of Ellis, teaches the method of claim 2, as described above.***

***Gallagher does not teach:***

- Wherein the vesting period begins at the date the buyer places the revocable purchase order and ends at a date after the initial public offering date

***Ellis teaches:***

- Wherein the vesting period begins at the date the buyer places the revocable purchase order and ends at a date after the initial public offering date (see at least pages 6-8)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Gallagher, in view of Tenenbaum, the teachings of Ellis. One would have been motivated to do so to create a reciprocating trust between the customer and the business (see at least Tenenbaum Abstract).*

**As per claim 4**

***Gallagher, in view of Tenenbaum, in further view of Ellis, teaches the method of claim 3, as described above.***

***Gallagher does not teach:***

- After the initial public offering date, publicly disclosing the revocable and irrevocable purchase orders in order to promote the manufacturer and increase the manufacturer's share price, thereby

motivating the buyer to irrevocably confirm its remaining unconfirmed purchase order before the end of the vesting period

***Ellis teaches:***

- After the initial public offering date, publicly disclosing the revocable and irrevocable purchase orders in order to promote the manufacturer and increase the manufacturer's share price, thereby motivating the buyer to irrevocably confirm its remaining unconfirmed purchase order before the end of the vesting period (see at least pages 6-8)

*However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add to the teachings of Gallagher, in view of Tenenbaum, the teachings of Ellis. One would have been motivated to do so to create a reciprocating trust between the customer and the business (see at least Tenenbaum Abstract).*

**As per claim 7**

***Gallagher, in view of Tenenbaum, teaches the method of claim 1, as described above.***

***Gallagher further teaches:***

- Wherein the warrant strike price is the share price of the manufacturer determined at one of: the warrant allotment date, and the manufacturer IPO date, and at a selected time between the aforementioned dates (see at least column 23, lines 16-35)

**As per claims 13-20**

Claims 13-20 encompass substantially the same scope as claims 1-12. Accordingly, claims 13-20 are rejected in substantially the same manner as claims 1-12, as described above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas M. Hammond III whose telephone number is 571-270-1829. The examiner can normally be reached on Monday - Thursday, 7AM - 5PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Thomas M Hammond III

Patent Examiner

Art Unit 3691

11-14-2007



HANI M. KAZIMI  
PRIMARY EXAMINER